

AMENDED IN ASSEMBLY JULY 11, 1997

AMENDED IN SENATE MAY 8, 1997

AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 941

Introduced by Senator Leslie

February 27, 1997

An act to add Article 2.5. (commencing with Section 1231) to Chapter 2 of Division 10 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 941, as amended, Leslie. Evidence: gang-related crimes.

Existing law governs the admissibility of evidence in criminal proceedings. Existing law provides exceptions to the hearsay rule.

This bill would create an exception to the hearsay rule for evidence of a prior statement made by a ~~witness~~ *declarant under penalty of perjury* if the ~~witness~~ *declarant* is deceased and the statement is relevant to the criminal prosecution of a gang-related crime, as specified. *The bill would authorize a peace officer to administer and certify oaths for these purposes.* The bill would also set forth the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 1231) is added to Chapter 2 of Division 10 of the Evidence Code, to read:

Article 2.5. Sworn Statements Regarding
Gang-Related Crimes

~~1231. Unless the court finds a clear bias or other reason to believe the statement was intended to mislead, evidence of a prior statement made by a witness is not made inadmissible by the hearsay rule if the witness is deceased and the statement meets all of the following criteria:~~

~~(a) The statement relates to acts or events relevant to a criminal prosecution under provisions of the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 of the Penal Code).~~

~~(b) To be admissible pursuant to this section, a verbatim transcript, copy, or record of the statement must exist.~~

~~(c) The statement relates to acts or events within the personal knowledge of the declarant.~~

~~(d) The statement was made under oath or affirmation in an affidavit; or was made at a deposition, preliminary hearing, grand jury hearing, or other proceeding in compliance with law, and was made under penalty of perjury.~~

~~(e) The declarant died from other than natural causes.~~

~~SEC. 2. It is the intent of the Legislature that this act~~

1231. Evidence of a prior statement made by a declarant is not made inadmissible by the hearsay rule if the declarant is deceased and the proponent of introducing the statement establishes each of the following:

(a) The statement relates to acts or events relevant to a criminal prosecution under provisions of the California Street Terrorism Enforcement and Prevention Act

1 *(Chapter 11 (commencing with Section 186.20) of Title*
2 *7 of Part 1 of the Penal Code).*

3 *(b) A verbatim transcript, copy, or record of the*
4 *statement exists.*

5 *(c) The statement relates to acts or events within the*
6 *personal knowledge of the declarant.*

7 *(d) The statement was made under oath or*
8 *affirmation in an affidavit; or was made at a deposition,*
9 *preliminary hearing, grand jury hearing, or other*
10 *proceeding in compliance with law, and was made under*
11 *penalty of perjury.*

12 *(e) The declarant died from other than natural causes.*

13 *(f) The statement was made under circumstances that*
14 *would indicate its trustworthiness and render the*
15 *declarant's statement particularly worthy of belief. For*
16 *purposes of this subdivision, circumstances relevant to*
17 *the issue of trustworthiness include, but are not limited*
18 *to, all of the following:*

19 *(1) Whether the statement was made in*
20 *contemplation of a pending or anticipated criminal or*
21 *civil matter, in which the declarant had an interest, other*
22 *than as a witness.*

23 *(2) Whether the declarant had a bias or motive for*
24 *fabricating the statement, and the extent of any bias or*
25 *motive.*

26 *(3) Whether the statement is corroborated by*
27 *evidence other than statements that are admissible only*
28 *pursuant to this section.*

29 *(4) Whether the statement was a statement against*
30 *the declarant's interest.*

31 *1231.1. A statement is admissible pursuant to Section*
32 *1231 only if the proponent of the statement makes known*
33 *to the adverse party the intention to offer the statement*
34 *and the particulars of the statement sufficiently in*
35 *advance of the proceedings to provide the adverse party*
36 *with a fair opportunity to prepare to meet the statement.*

37 *1231.2. A peace officer may administer and certify*
38 *oaths for purposes of this article.*

39 *SEC. 2. This act shall not affect other evidentiary*
40 *requirements, including, but not limited to, Sections 351*

1 and 352 of the Evidence Code, shall not impair a party's
2 right to attack the credibility of the declarant pursuant to
3 Section 1202 of the Evidence Code, shall not affect the
4 defendant's right to discovery for purposes of producing
5 rebuttal evidence attacking the declarant's credibility,
6 and shall not be used in a manner inconsistent with the
7 defendant's right to due process and to confront witnesses
8 under the United States or California Constitution.

